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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,586	07/28/2006	Yoav Levy	2008_0020	9679

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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1797

NOTIFICATION DATE	DELIVERY MODE
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08/06/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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This Office action is to replace the final office action mailed 8/2/10 which failed to include a PTOL-892 citing the newly applied reference Zweig et al. and included a typographical error such that claim 13 was not addressed as rejected under the 35 USC 103 . Additionally, this replacement Office action will note on the PTOL-326 that claims 9-12 and 17-19 are also pending but withdrawn from consideration as a result of Applicant's 10/30/09 election. The period for response will be restarted with the mail date of this replacement office action. The Office regrets any inconvenience cause to Applicant.

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8, 13,15-16, 21 and 23, drawn to a time temperature indicating device comprising a reference scale and a protector.

Group II, claim(s) 22, drawn to a time temperature indicating device comprising a protector.

2. The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The invention of group II does lacks the special technical feature of a reference scale that is in group I.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention or species.

Should applicant traverse on the ground that the inventions have unity of invention (37 CFR 1.475(a)), applicant must provide reasons in support thereof. Applicant may submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. Where such evidence or admission is provided by applicant, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

1. Newly submitted claim 22 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: See the above restriction requirement.

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Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 22 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-2, 5-8,13, 15-16,21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ignacio et al. in view of in view of Zweig et al. (US 2003/0139903).
2. See the appropriate paragraph of the 3/1/10 Office action for the teachings of Ignacio et al.
3. Ignacio et al. are silent to the presently claimed “reference scale” and a “cover”.
4. Zweig et al. teaches a time temperature indicator. Paragraph[0031] teaches a time temperature indicator(10) associated with a color reference chart(12) as illustrated in figure 4. The use of the reference chart(12) is advantageous for the user to properly interpret the results of the time temperature indicator.
5. Additionally, it is notoriously well known in the art to place a cover over an indicator to protect the indicator from photo-degradation and prolong the shelf life of the indicator.
6. It would have been within the skill of the art to modify Ignacio et al. in view of Zweig et al. and include a reference chart to facilitate proper interpretation of the time temperature indicator. Further, it would have been within the skill of the art to place a cover over the compound of Ignacio et al. to gain the expected and well known results of prolonged shelf life.

Allowable Subject Matter

1. Claims 3-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
2. The following is a statement of reasons for the indication of allowable subject matter: In addition to the remarks of record, the cited prior art fails to teach or suggest the claimed time temperature indicator comprising the compounds of claims 3-4 in combination with the reference scale and a protector. Tatezono et al. teaches the compositions of claims 3-4 as a recording media which the Office considers as non-analogous art to the claimed time-temperature indicating system .

Response to Arguments

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYLE A. ALEXANDER whose telephone number is (571)272-1254. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/LYLE A ALEXANDER/

Primary Examiner, Art Unit 1797